

State of South Dakota

EIGHTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2014

409V0303

HOUSE BILL NO. 1212

Introduced by: Representatives Westra, Anderson, Cronin, Duvall, Gosch, Greenfield, Lust,
and Wink and Senators Peters, Brown, Lederman, Maher, and Rave

1 FOR AN ACT ENTITLED, An Act to provide for fair and open competition in certain
2 governmental contracts, to prohibit the inclusion of certain terms in governmental contracts
3 and documents, and to establish a procedure to grant certain exemptions after notice and a
4 public hearing.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

6 Section 1. That chapter 5-18A be amended by adding thereto a NEW SECTION to read as
7 follows:

8 This Act is intended to provide for more economical, nondiscriminatory, neutral, and
9 efficient procurement of construction-related goods and services by this state and political
10 subdivisions of this state as market participants by providing for fair and open competition in
11 government contracts.

12 Section 2. That chapter 5-18A be amended by adding thereto a NEW SECTION to read as
13 follows:

14 Subject to the provisions of section 4 of this Act, no governmental unit awarding a contract
15 after July 1, 2014, for the construction, repair, remodel, or demolition of a facility and no



1 construction manager acting on behalf of the governmental unit may include any of the
2 following in a bid specification, project agreement, or other controlling document:

3 (1) A term that requires or prohibits a bidder, offeror, contractor, or subcontractor from
4 entering into or adhering to an agreement with one or more labor organizations in
5 regard to that project or a related construction project; or

6 (2) A term that otherwise discriminates against a bidder, offeror, contractor, or
7 subcontractor for becoming, remaining, or refusing to become or remain a signatory
8 to, or for adhering or refusing to adhere to, an agreement with one or more labor
9 organizations in regard to that project or a related construction project.

10 Section 3. That chapter 5-18A be amended by adding thereto a NEW SECTION to read as
11 follows:

12 Subject to the provisions of section 4 of this Act, no governmental unit may award a grant,
13 tax abatement, or tax credit that is conditioned upon a requirement that the awardee include a
14 term described in section 2 of this Act in a contract or document for any construction,
15 improvement, maintenance, or renovation to real property or fixture that is the subject of the
16 grant, tax abatement, or tax credit.

17 Section 4. That chapter 5-18A be amended by adding thereto a NEW SECTION to read as
18 follows:

19 Nothing in this Act prohibits a governmental unit from awarding a contract, grant, tax
20 abatement, or tax credit to a private owner, bidder, contractor, or subcontractor who enters into
21 or who is party to an agreement with a labor organization, if being or becoming a party or
22 adhering to an agreement with a labor organization is not a condition for award of the contract,
23 grant, tax abatement, or tax credit, and if the governmental unit does not discriminate against
24 a private owner, bidder, contractor, or subcontractor in the awarding of that contract, grant, tax

1 abatement, or tax credit based upon the status as being or becoming, or the willingness or refusal
2 to become, a party to an agreement with a labor organization.

3 Nothing in this Act prohibits a contractor or subcontractor from voluntarily entering into or
4 complying with an agreement entered into with one or more labor organizations in regard to a
5 contract with a governmental unit or funded in whole or in part from a grant, tax abatement, or
6 tax credit from the governmental unit.

7 Section 5. That chapter 5-18A be amended by adding thereto a NEW SECTION to read as
8 follows:

9 The head of a governmental unit may exempt a particular project, contract, subcontract,
10 grant, tax abatement, or tax credit from the requirements of any or all of the provisions of
11 sections 2 and 3 of this Act only if the governmental unit finds, after public notice and a hearing,
12 that special circumstances require an exemption to avert an imminent threat to public health or
13 safety. A finding of special circumstances under this section may not be based on the possibility
14 or presence of a labor dispute concerning the use of contractors or subcontractors who are
15 nonsignatories to, or otherwise do not adhere to, agreements with one or more labor
16 organizations, or concerning employees on the project who are not members of or affiliated with
17 a labor organization.

18 Section 6. That chapter 5-18A be amended by adding thereto a NEW SECTION to read as
19 follows:

20 Nothing in this Act prohibits an employer or other party from entering into an agreement or
21 engaging in any other activity protected by the National Labor Relations Act, 29 U.S.C. 151 to
22 169.

23 Nothing in this Act interferes with labor relations of parties that are not regulated by the
24 National Labor Relations Act, 29 U.S.C. 151 to 169.